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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Request for Agency Action and Complaint of US Magnesium, LLC against Dominion Energy Utah	Docket No. 17-057-13
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**US MAGNESIUM, LLC’S MEMORANDUM IN OPPOSITION TO DOMINION
ENERGY UTAH’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to R746-1-301 and R746-1-105 of the Utah Administrative Code, and Rule 56 of the Utah Rules of Civil Procedure, US Magnesium, LLC (“US Magnesium”) hereby submits this Memorandum in Opposition to the Motion for Summary Judgment filed by Dominion Energy Utah (“DEU”).

INTRODUCTION

In its Motion, DEU incorrectly asserts that it satisfies its obligation to provide proper notice of an interruption to its customers by utilizing *any* contact information it has for that customer—rather than by using the contact information provided to DEU by the customer for the specific purpose of receiving notices of interruption. Section 3.02 of DEU’s Natural Gas Tariff (“DEU Tariff § 3.02”) requires each customer, once properly notified of an interruption, “to

interrupt as soon as is operationally possible, but no later than two hours from notice.”¹ If DEU properly notifies a customer of an interruption, and that customer fails to interrupt, then the customer is subject to enormous penalties under DEU Tariff § 3.02.

To ensure that DEU can properly notify a customer of an interruption—and to ensure that the customer receives proper notification from DEU—DEU Tariff § 3.02 requires a customer to provide to DEU contact information “that enables the Company to immediately notify a customer of a required interruption.” This “Interruption Contact” information is, therefore, the contact information that the customer indicates to DEU is the appropriate method to immediately and properly notify the customer of an interruption. This “Interruption Contact” information is the manner in which DEU must notify a customer of an interruption pursuant to DEU Tariff § 3.02.

In this matter, US Magnesium provided two types of “Interruption Contact” information—“Day Phone” and “Mobile Phone” numbers. The “Day Phone” numbers were the method by which DEU was to notify US Magnesium of a service interruption during the daytime hours. The “Mobile Phone” numbers were the method by which DEU was to notify US Magnesium of a service interruption at times other than daytime operating hours.

The “Day Phone” numbers included land line numbers with extensions. DEU’s automated notification system was incapable of dialing through to phone numbers with extensions, but DEU did not inform US Magnesium of this system limitation prior to the January 6-7, 2017 interruption. Because of this system limitation, DEU could not notify US Magnesium of the January 6-7, 2017 interruption, which occurred during daytime operating hours. As such,

¹ *Id.*

and for the reasons set forth below and in US Magnesium’s Motion for Summary Judgment, DEU did not properly notify US Magnesium of the January 6-7, 2017 interruption and cannot impose penalties on US Magnesium pursuant to DEU Tariff § 3.02.

US MAGNESIUM’S RESPONSE TO DEU’S STATEMENT OF MATERIAL FACT

Pursuant to Utah Rule of Civil Procedure 56(a)(2), US Magnesium hereby responds to the purported “Statement of Undisputed Material Facts” set forth on pages 8-17 of DEU’s Motion. In its Motion, DEU also presents a number of “Background Facts.” DEU does not present these “Background Facts” as undisputed material facts pursuant to Utah Rule of Civil Procedure 56(a)(1) and, as such, US Magnesium is not required to respond to them and US Magnesium’s election not to respond to those facts is not deemed an admission of those facts for purposes of the motion. US Magnesium hereby states that it disputes DEU’s characterization of certain facts in the Background Facts section and will address certain of those mischaracterizations in this memorandum.

Below, pursuant to Rule 56(a)(2), US Magnesium presents a “verbatim restatement of each of the [DEU’s] facts that is disputed with an explanation of the grounds for the dispute.”

DEU Statement of Fact No. 12:

“On the morning of January 6, 2017, Dominion Energy declared an interruption and sent a notice of the interruption to all of its interruptible customers, including to the contacts identified in US Magnesium’s Customer Information Sheet.”

US Magnesium Response:

The evidence cited by DEU in support of Statement of Fact No. 12 does not support the assertion that DEU sent a notice of the interruption “to the contacts identified in US

Magnesium’s Customer Information Sheet,” as alleged by DEU. DEU’s cited evidence does not support the assertion (or the inference) that DEU provided proper notice of the interruption as required by DEU Tariff § 3.02. The evidence cited does not support the inference that DEU provided notice to US Magnesium at all of the “Interruption Contacts” on US Magnesium’s Customer Information Sheet, or that DEU’s efforts to provide notice to other contact points on US Magnesium’s Customer Information Sheet were clearly sent by DEU (or Questar Gas).

First, it is undisputed that DEU did *not* send a notice of the interruption to the Interruption Contact “Day Phone” numbers with extensions identified on US Magnesium’s Customer Information Sheet.²

Second, DEU has presented no evidence to support the assertion that DEU notified US Magnesium of the interruption by sending a fax to the “Fax. No.” identified as an “Interruption Contact” in US Magnesium’s Customer Information Sheet.

Third, the evidence in this matter clearly demonstrates that the January 6, 2017 text messages sent to Mr. Swenson and to Mr. Tucker were sent from a sender identified only as “76127”—a number unknown to Mr. Swenson and to Mr. Tucker.³ While the body of the text message indicated that “Questar Gas has called system capacity and supply reduction

² See Roger Swenson Direct Testimony (“R. Swenson Direct Test.” at lines 246-251; Bruce Rickenbach Direct Test. (“B. Rickenbach Direct Test.”) at lines 61-64; Roger Swenson Rebuttal Testimony (“R. Swenson Rebuttal Test.”) at lines 28-31; Mike Tucker Direct Testimony (“M. Tucker Direct Test.”) at lines 45-59. See also DEU Motion Statement of Undisputed Material Fact No. 18 (“Dominion Energy’s system also called the land-line telephone numbers provided by US Magnesium, but those numbers were accompanied by extensions.”); DEU Motion Statement of Undisputed Material Fact No. 19 (“Dominion Energy’s notification system is unable to dial extensions.”).

³ See January 6, 2017 text message from “76127” attached as Exhibit H to US Magnesium Motion for Summary Judgment (“US Magnesium Motion”). See also R. Swenson Direct Test. at lines 176-182 & 329-341.

interruptions,” it did not state whether the interruptions were system wide or were limited in scope and did not notify the recipient that these interruptions would require the recipient to curtail gas usage. Rather, the body of the message only directed the recipient to “[p]lease review your email for more details.”⁴

Fourth, the evidence in this matter clearly demonstrates that the January 6, 2017 emails DEU relies on that were sent to Mr. Swenson and Mr. Tucker were sent by an account titled “noreply@ecnalert.com,” and were not identified as having come from DEU or Questar Gas.⁵ The emails did not clearly direct its recipients to take any particular action.⁶

DEU Statement of Fact No. 13:

“At 11:11 a.m., Dominion Energy’s notification system sent an email to Mr. Swenson at US Magnesium stating:

The Questar gas service territory is experiencing extreme cold temperatures and supply constraints. Firm load demand on the Questar Gas distribution system requires that Questar Gas implement a service interruption for customers with interruptible load.

Supply availability from upstream pipelines to the Questar gas system is also currently limited. Questar Gas is unable to provide additional supplied [sic] to make up for any shortfalls in the amount of gas being provided on your behalf to the Questar Gas system. As a result, even if you have enough firm capacity on the Questar Gas system to cover your usage, you are also required to limit your usage to not exceed the scheduled quantity being provided to the Questar Gas system for your use.

⁴ See R. Swenson Direct Test. at lines 329-341; Jan. 16, 2017 text message attached as Exhibit H to US Magnesium Motion for Summary Judgment.

⁵ See R. Swenson Direct Test. at lines 183-188; M. Tucker Direct Test. at lines 69-73. See also January 6, 2017 email from “noreply@ecnalert.com”, US Magnesium Direct Testimony Exhibits 6 & 11, attached to US Magnesium Motion as Exhibit C.

⁶ See R. Swenson Direct Test. at 189-204 & 317-328; M. Tucker Direct Test. at lines 74-89; US Magnesium Motion Exhibit C (Jan. 6, 2017 email from “noreply@ecnalert.com”).

Your allowable usage for each hour will be equal to the lesser of your firm contract amount divided by 24, or your scheduled quantity divided by 24, for each hour of the interruption. This will be calculated for each hour based on the scheduled quantity available for the applicable hours of interruption.

If necessary, please restrict your usage as soon as possible, but in no case more than two hours from this notice.

You will be notified by Questar Gas when the interruption is lifted.

Please call your nominating party (Marketing Agent) if you have any questions regarding your scheduled quantity of [sic] your Questar Gas representative with any questions regarding your firm contract limit.

Mr. Swenson admits having received this email.”

US Magnesium Response:

US Magnesium notes—and this point appears to be undisputed—that the referenced email was sent from an account titled “no-reply@ecnalert.com,” and was not identified as having come from DEU or Questar Gas.⁷ Moreover, the email message does not clearly indicate what the recipient is required to do in response.⁸ The second paragraph of the notice informs the recipient “to limit your usage to not exceed the scheduled quantity being provided to the Questar Gas system for your use.” The third paragraph, however, states that “[y]our allowable usage for each hour will be equal to the lesser of your firm contract amount divided by 24, or your scheduled quantity divided by 24, for each hour of the interruption.” These two statements

⁷ See R. Swenson Direct Test. at lines 183-188; M. Tucker Direct Test. at lines 69-73. See also January 6, 2017 email from “noreply@ecnalert.com”, US Magnesium Direct Testimony Exhibits 6 & 11, attached to US Magnesium Motion as Exhibit C.

⁸ See R. Swenson Direct Test. at 189-204 & 317-328; M. Tucker Direct Test. at lines 74-89; US Magnesium Motion Exhibit C (Jan. 6, 2017 email from “noreply@ecnalert.com”).

conflict with each other and do not clearly inform the recipient what action it must take in response to the email message.⁹

DEU Statement of Fact No. 14:

“At 1:13 a.m., Dominion Energy’s system sent an identical email to Mr. Tucker. Mr. Tucker admits having received this email.”

US Magnesium Response:

US Magnesium reasserts its response to DEU Statement of Fact No. 13 as though fully set forth herein.

DEU Statement of Fact No. 15:

“At 11:15 a.m., Dominion Energy’s automated system called Messrs. Swenson’s and Tucker’s cellphones and left voice messages, notifying them of the interruption. The system also sent Mr. Tucker and Mr. Swenson text messages notifying them of the interruption. Mr. Swenson admits he received the text message, and Mr. Tucker admits he received the voice and text message.”

US Magnesium Response:

US Magnesium notes that the evidence DEU cites does not support the first sentence of DEU Statement of Fact No. 15. DEU has presented no evidence in this matter regarding the content of voice messages left with Mr. Tucker and Mr. Swenson, so there is no support for the assertion that the voice messages notified Mr. Swenson or Mr. Tucker of the interruption. Moreover, DEU has not identified the phone number used by the DEU system for leaving those voice messages. As discussed below, the phone number the DEU system uses for text messages

⁹ *Id.* See also US Magnesium Motion at 10-11.

is not a known DEU or Questar Gas phone number and the same number may have been used to call cell phones.

As discussed in response to DEU Statement of Fact No. 12, above, the evidence in this matter clearly demonstrates that the January 6, 2017 text messages sent to Mr. Swenson and to Mr. Tucker were sent from a sender identified only as “76127”—a number unknown to Mr. Swenson or to Mr. Tucker.¹⁰ While the body of the text message indicated that “Questar Gas has called system capacity and supply reduction interruptions,” it did not state whether the interruptions were system wide or were limited in scope and did not notify the recipient that these interruptions would require the recipient to curtail gas usage. Rather, the body of the message only directed the recipient to “[p]lease review your email for more details.”¹¹

DEU Statement of Fact No. 16:

“US Magnesium claims that Mr. Swenson and Mr. Tucker did not understand the voice messages, emails and texts they received and did not know who they were from, even though Mr. Swenson and Mr. Tucker had been informed of an interruption from Dominion Energy was forthcoming, and the emails they received clearly referenced that ‘Questar Gas’ was requiring the interruption.”

US Magnesium Response:

The assertion that “Mr. Swenson and Mr. Tucker had been informed of an interruption from Dominion Energy was forthcoming” is not supported by the evidence cited. DEU simply

¹⁰ See January 6, 2017 text message from “76127” attached as Exhibit H to US Magnesium Motion for Summary Judgment (“US Magnesium Motion”). See also R. Swenson Direct Test. at lines 176-182 & 329-341.

¹¹ See R. Swenson Direct Test. at lines 329-341; Jan. 16, 2017 text message attached as Exhibit H to US Magnesium Motion for Summary Judgment.

does not cite to any evidence in support of Fact No. 16 to support the statement, and it is unclear who DEU claims allegedly “informed” US Magnesium of a forthcoming interruption and what facts would support such a claim.

US Magnesium presumes that DEU is making reference to a communication US Magnesium received from its Marketing Agent at some point before the January 6, 2017 interruption. In the first sentence of Section F of the “Background Facts” section of its Motion, DEU asserts that “Prior to January 6, US Magnesium’s marketing agent informed US Magnesium that Dominion Energy was likely to order an interruption in the coming days due to expected cold weather,” and cites to testimony from DEU witness Bruce Rickenbach, which itself cites to an email from Roger Swenson to Mr. Rickenbach.¹² In that email, Mr. Swenson says “Matt Medura had been telling us to be expecting a call but Mike never got one.”¹³ DEU is not entitled to the inference that US Magnesium was informed that an interruption was “forthcoming” or “likely.” Rather, the only permissible inference is that US Magnesium was informed by its marketing agent to expect a call from DEU—a call that never came because DEU’s automated notification system could not dial through to phone numbers with extensions and, as such, could not notify US Magnesium at the Interruption Contact “Day Phone” number on US Magnesium’s Customer Information Sheet.

DEU Statement of Fact No. 19:

“Dominion Energy’s notification system is unable to dial extensions. As such, at 11:15 a.m., a voice message from the system was sent to US Magnesium’s switchboard.

¹² See DEU Motion at 6 & n.23. The cited testimony of Mr. Rickenbach erroneously cites to DEU Exhibit 1.5.

¹³ DEU Exhibit 1.5.

US Magnesium’s switchboard operator received the message, and was informed that the message could be repeated by pressing any button on the phone. However, the phone on which the message was received apparently had no buttons, and the operator hung up after hearing the message.”

US Magnesium Response:

The first sentence of DEU Statement of Fact No. 19 is undisputed. The entirety of the remainder of DEU Statement of Fact No. 19 is premised on a mischaracterization of a January 26, 2017 email between US Magnesium witnesses Mike Tucker and Roger Swenson. In its attempt to support this incorrect statement, DEU cites the email, as well as testimony from DEU witness Bruce Rickenbach, who offers testimony about the email despite not being a recipient of the email and having no personal knowledge of the email. As such, US Magnesium objects to Fact No. 19 on the grounds that the testimony of Mr. Rickenbach regarding the email lacks foundation and is not admissible. US Magnesium further objects that the assertion in Statement of Fact No. 19 that the call referenced in the email came at 11:15 a.m. on January 6, 2017 is not supported by the email. The cited email does not state the time of the alleged call and, as set forth below, the email references a phone call on a completely different date *after* the interruption in question.

In addition to the fact that Mr. Rickenbach lacks foundation to testify about the January 26, 2017 email between Mr. Tucker and Mr. Swenson, Mr. Rickenbach’s testimony purporting to explain the email is simply wrong. US Magnesium has offered testimony from Mr. Swenson—the recipient of the email—describing the context in which the email was sent.¹⁴ In his

¹⁴ Rebuttal Testimony of Roger Swenson (“R. Swenson Rebuttal Test.”) at lines 177-202.

testimony, Mr. Swenson states that the January 26, 2017 email did not reference a phone call made by DEU to US Magnesium on January 6, 2017. Rather, the phone call referenced in the email was made on January 26, 2017—*after* the January 6-7, 2017 interruption and was made in the context of US Magnesium attempting to remedy the fact that DEU’s automated notification system cannot dial through to the Interruption Contact Day Phone numbers with extensions listed in US Magnesium’s Customer Information Sheet. In an attempt to provide a phone number that DEU’s automated notification system can contact in the event of an interruption, US Magnesium sought to install a phone in the US Magnesium control room that can be reached without dialing an extension. US Magnesium had DEU call on January 26, 2017 to test the phone to see if DEU’s system could dial the new phone. The initial call on that date was unsuccessful. Subsequent tests using different phones proved successful and US Magnesium now has a phone in its control room that can be reached without dialing an extension so that DEU can dial through using its automated notification system.¹⁵

If DEU had notified US Magnesium prior to the January 6-7, 2017 interruption that the DEU automated notification system could not dial through to phone numbers with extensions, it would have installed the direct dial phone in the control room, which is manned 24 hours a day, and would have identified this control room phone as the Interruption Contact Day Phone number on its Customer Information Sheet. This would have ensured that DEU’s system could notify US Magnesium of an interruption.¹⁶

¹⁵ *Id.*

¹⁶ *See* R. Swenson Direct Test. at lines 220-226. *See also* M. Tucker Direct Test. at lines 90-106.

DEU Statement of Fact No. 20:

“During the afternoon of January 6, 2017, and as a courtesy to US Magnesium, Mr. Rickenbach called Mr. Swenson on his cellphone regarding the interruption notice. Mr. Swenson answered the call, and Mr. Rickenbach asked Mr. Swenson whether he had received the interruption notice. Mr. Swenson indicated that he was traveling but had received the notice.”

US Magnesium Response:

US Magnesium disputes the inference that Mr. Rickenbach’s call to Mr. Swenson constitutes notice or an admission that US Magnesium received notice. Regarding this call, Mr. Swenson states in his direct testimony that Mr. Rickenbach called to ask if the automated notification system had worked, leaving the impression that Mr. Rickenbach was not sure that the system had worked. Mr. Swenson responded that he did receive a text message, but that he was traveling through an area with no cell service when the text message was sent and that he only received the text message later, once he returned to an area with cell service. Mr. Swenson further testified that, at the time of his call with Mr. Rickenbach, he did not know that DEU’s automated notification system could not contact the Interruption Contact Day Phone numbers on US Magnesium’s Customer Information Sheet, and that he assumed that US Magnesium had received a phone call on its land lines with extensions.¹⁷

¹⁷ See R. Swenson Direct Test. at lines 227-239; R. Swenson Rebuttal Test. at lines 251-257.

DEU Statement of Fact No. 21:

“Despite receiving the foregoing interruption notices, and notice of the interruption from its gas marketer, US Magnesium did not interrupt its gas usage prior to the Company lifting the interruption.”

US Magnesium Response:

US Magnesium objects to DEU Statement of Fact No. 21 on the grounds that it is not supported by the evidence. The only evidence cited in support of the statement of fact is DEU Exhibit 1.10 attached to the Direct Testimony of Bruce Rickenbach. That Exhibit sets forth several emails from US Magnesium’s marketing agent, Matt Medura, to numerous recipients.

US Magnesium responds to the assertion regarding the “foregoing interruption notices” by incorporating herein its response to DEU’s factual allegations regarding those purported notices, set forth above.

Moreover, US Magnesium objects to DEU’s use of the email from US Magnesium’s marketing agent as evidence that US Magnesium received notice of the January 6-7, 2017 interruption. The cited email is not relevant to the issue of whether DEU is permitted to impose sanctions under DEU Tariff § 3.02. That provision permits DEU to impose penalties only if a customer “fails to interrupt when properly called upon *by the Company* to do so.”¹⁸

Communications US Magnesium received from its marketing agent are not communications from DEU. In addition, US Magnesium notes that the referenced email does not indicate which email addresses it went to and there is no evidence to support any inference that the email went to any of the emails on US Magnesium’s Customer Information Sheet. Furthermore, there are no

¹⁸ DEU Tariff § 3.02 (emphasis added).

email addresses on the US Magnesium Customer Information Sheet listed under “Interruption Contacts,” and, as such, an email—particularly an email from someone other than DEU—cannot constitute “notice” of the January 6-7, 2017 interruption.

ARGUMENT

DEU may not impose penalties against US Magnesium pursuant to DEU Tariff § 3.02 based on the facts of this docket, and DEU’s Motion should be denied for the following reasons:

A) DEU Tariff § 3.02 requires DEU to notify each customer of an interruption at the contact information provided to DEU by the customer that will enable DEU to immediately notify the customer of a required interruption;

B) DEU did not notify US Magnesium at the contact information that US Magnesium provided to DEU for interruption notices; and

A. DEU Tariff § 3.02 Requires DEU To Notify Each Customer At The Contact Information Provided To DEU By The Customer That Will Enable DEU To Immediately Notify The Customer Of A Required Interruption.

DEU Tariff § 3.02 requires each customer to provide to DEU contact information that will enable DEU to immediately notify the customer of a required interruption and, importantly, requires DEU to use that same contact information to notify the customer of a required interruption. In its Motion, DEU incorrectly asserts that DEU Tariff § 3.02 does not mandate the manner in which DEU must notify customers of an interruption. DEU Tariff § 3.02 states the following with respect to the customer’s obligation to provide DEU with contact information to be used to notify the customer of an interruption, and with respect to DEU’s obligation to use that information.

All interruptible service is subject to simultaneous interruption. Upon notice from the Company, interruptible customers are required to interrupt as soon as is operationally possible, but no later than two hours from notice. The Company requires each interruptible customer to provide, and update as necessary, contact information that enables the Company to immediately notify a customer of a required interruption. In the event the Company is unable to notify a customer using the contact information, the customer may be subject to the charges and penalty described below.

....

A customer who fails to interrupt *when properly called upon by the Company* to do so will incur a \$40-per-decatherm penalty for all interruptible volumes utilized during the course of an interruption.¹⁹

The structure and the plain language of the above-cited portions of DEU Tariff § 3.02 makes clear that DEU must use contact information provided by the customer for interruption notices to notify the customer of an interruption. These provisions place two requirements on customers. First, the customer must provide DEU with “contact information that enables the Company to immediately notify a customer of a required interruption.”²⁰ Second, once notified by DEU, the customer that receives notice from DEU must “interrupt as soon as is operationally possible, but no later than two hours from notice.”²¹ It would be nonsensical to place these dual requirements on customers if, in turn, DEU is not required to notify customers of an interruption at the contact information provided by the customers to DEU for interruption notices. The “notice” that triggers a customer’s obligation to interrupt within two hours must be tied to the contact information the customer provides to DEU that enables DEU to immediately notify the customer of a required interruption.

¹⁹ DEU Tariff § 3.02 (emphasis added).

²⁰ *Id.*

²¹ *Id.*

DEU may only impose penalties for a customer's failure to interrupt if the customer is first "properly called upon by the Company."²² To be "properly called upon by the Company," a customer must receive notice of an interruption at the contact information provided to DEU by the customer for the purpose of receiving interruption notices. As discussed in US Magnesium's Motion, the \$40-per-decatherm penalty imposed under DEU Tariff § 3.02 is punitive, with a per-decatherm price more than 50 times the per-decatherm price of gas under the interruptible service rate schedule.²³ To impose a penalty with such enormous consequences, DEU must first provide notice to a customer of an interruption using the contact information provided by the customer for receiving interruption notices—contact information "that enables the Company to immediately notify a customer of a required interruption," and that will enable the customer "to interrupt as soon as is operationally possible."²⁴

In its Motion, DEU incorrectly asserts that it satisfies its obligation under DEU Tariff § 3.02 to notify a customer of an interruption when it contacts the customer using *any* contact information DEU has on file for the customer—even when DEU fails to notify the customer of an interruption at the contact information "that enables the Company to immediately notify a customer of a required interruption." DEU provides no support for its position that providing notice at any contact information is sufficient to impose the enormous penalties for failure to interrupt under DEU Tariff § 3.02 and, as set forth above, such an interpretation of DEU's obligations under the tariff is nonsensical. There may be any number of ways in which DEU can

²² *Id.* ("A customer who fails to interrupt *when properly called upon by the Company* to do so will incur a \$40-per-decatherm penalty for all interruptible volumes utilized during the course of an interruption.").

²³ See US Magnesium Motion at 2 (citing DEU Tariff § 5.07 at Pages 5-12).

²⁴ DEU Tariff § 3.02.

communicate with a customer—mail, email, fax, land line, cell phone, etc. There are also be any number of reasons that DEU may want to communicate with a customer—to convey information regarding billing and payment matters, to provide general information about the customer’s account, etc. As evidenced by the Customer Information Sheet provided by US Magnesium to DEU, a customer may provide DEU with different types of contact information to account for the various purposes that DEU may have to communicate with the customer. Most notices from DEU to the customer do not require an immediate response from the customer. As discussed above, however, DEU Tariff § 3.02 requires a customer to respond immediately when it receives notice of an interruption.²⁵ The contact information a customer might use for an interruption, therefore, may be different from contact information for the purpose of receiving notices from the company regarding billing and other general information. This is why a customer is required “to provide, and update as necessary, contact information that enables the Company to immediately notify a customer of a required interruption.”²⁶ For these reasons, when DEU provides notice of interruptions under DEU Tariff § 3.02 it must use the contact information provided by the customer for the receipt of such notices.

As discussed in Section B, below, DEU did not notify US Magnesium of the January 6-7, 2017 interruption at the contact information provided by US Magnesium for the receipt of interruption notices.

²⁵ See DEU Tariff § 3.02 (“Upon notice from the Company, interruptible customers are required to interrupt as soon as is operationally possible, but no later than two hours from notice.”).

²⁶ *Id.*

B. DEU Did Not Notify US Magnesium At The Contact Information That US Magnesium Provided To DEU For Interruption Notices.

Three weeks before the January 6-7, 2017 interruption at issue in this docket, US Magnesium submitted a Customer Information Sheet to DEU, which included general contact information as well as “Interruption Contacts” consisting of phone numbers that DEU was to use to notify US Magnesium of interruptions.²⁷ The “Interruption Contacts” portion of the Customer Information Sheet shows as follows:

<u>Interruption Contacts</u>	<u>Title</u>	<u>Day Phone</u>	<u>Night Phone</u>	<u>FAX</u>	<u>Mobile Phone</u>
1ST: Mike Tucker	Utility Supervisor	801 532-2043 1337			801 597-6834
2ND: Roger Swenson	Energy Consultant	801 532-1522 529		801 534-1407	801 541-2272

The “Interruption Contacts” include phone numbers under the heading “Day Phone” that DEU was to use to notify US Magnesium of an interruption that occurs during daytime hours.²⁸ It also includes “Mobile Phone” numbers for notifying US Magnesium of interruptions at other times.

DEU admits that, during the January 6-7, 2017 interruption, it used a new automated notification system that could not dial through to phone numbers with extensions.²⁹ As a result, DEU did not notify US Magnesium of the interruption at the “Day Phone” numbers listed in US Magnesium’s “Interruption Contacts.” In an effort to downplay this fact, DEU falsely claims that when its automated notification system tried to call the “Day Phone” contact phone numbers with extensions on January 6, 2017, that the call was routed to US Magnesium’s switchboard operator, who received a message but then hung up.³⁰ This is incorrect. DEU’s claim is based on a misinterpretation of an internal US Magnesium email dated January 26, 2017. That email

²⁷ See R. Swenson Direct Test. at lines 123-153. See also Customer Information Sheet (US Magnesium Direct Testimony Exhibit 4).

²⁸ See Customer Information Sheet (US Magnesium Direct Testimony Ex. 4).

²⁹ Bruce Rickenbach Direct Test. at lines 61-64.

³⁰ See DEU Statement of Fact No. 19 and US Magnesium response.

does not in any way relate to DEU's failed effort on January 6, 2017 to call the Day Phone land line phone numbers with extensions listed in the "Interruption Contacts" portion of US Magnesium's Customer Information Sheet.³¹ As discussed in the testimony of Roger Swenson—the actual recipient of the email in question—the email addresses US Magnesium's first attempt after the January 6-7, 2017 interruption to remedy the problem caused by DEU's inability to provide notice of interruptions to customers with phone numbers with extensions.³² After the interruption, and after US Magnesium learned for the first time of the shortcomings of the DEU automated notification system, US Magnesium installed a telephone in its control room and asked DEU to call that phone to test to see if it worked. The automated message requires the person answering the phone to push buttons, which the phone installed for this purpose did not have. After this test, US Magnesium installed a different phone in the control room that can receive messages from DEU's automated notification system.³³

It is notable that DEU did not inform US Magnesium that its automated notification system could not dial through to phone numbers with extensions. DEU claims that it had used automated notification systems for years and that none of them could dial through to phone numbers with extensions. This information had never been conveyed to US Magnesium. DEU did not inform US Magnesium of this fact when, in November of 2016, Mr. Rickenbach sent the Customer Information Sheet containing "Interruption Contacts" with phone numbers with extensions. DEU also did not inform US Magnesium of this fact when US Magnesium provided DEU a signed Customer Information Sheet on December 12, 2016 that contained "Interruption

³¹ *Id.*

³² Rebuttal Testimony of Roger Swenson ("R. Swenson Rebuttal Test.") at lines 177-202.

³³ *Id.*

Contacts” with phone numbers with extensions. If DEU is to be permitted to impose the enormous \$40-per-decatherm penalties set forth in DEU Tariff § 3.02, it should first be required to inform all customers of the limitations of its interruption notification system. DEU did not provide such notice in this instance, despite being well aware of that limitation and despite providing US Magnesium with a Customer Information Sheet containing Interruption Contacts with phone numbers with extensions.

In its Motion, DEU seeks to sidestep the fact that its automated notification system was incapable of providing notices of interruption to customers with phone systems using extensions and that DEU had known of this limitation for some time without informing US Magnesium about it. DEU claims that it notified US Magnesium of the January 6-7, 2017 interruption when its automated notification system left voice messages at the Mobile Phone numbers listed in the “Interruption Contacts” portion of US Magnesium’s Customer Information Sheet. As explained in US Magnesium’s testimony and in its Motion, US Magnesium personnel are not permitted to carry cell phones at the plant for security reasons. For interruptions during daytime operating hours, US Magnesium relied on receiving phone calls at the land lines with extensions set forth in the “Day Phone” portion of the “Interruption Contacts.” That is, US Magnesium complied with its obligation under DEU Tariff § 3.02 to provide contact information “that enables the Company to immediately notify a customer of a required interruption” by providing Day Phone contact information for interruptions that occur during daytime operating hours. To receive notices of interruptions at times other than daytime operating hours, US Magnesium listed Mike Tucker’s and Roger Swenson’s Mobile Phone numbers as “Interruption Contacts” on the Customer Information Sheet.

Mike Tucker of US Magnesium did not receive the text message or voice message on his Mobile Phone until he returned home from the plant at the end of the day on January 6, 2017. Roger Swenson was traveling on the morning of January 6 and also did not immediately receive the text message and voice message. Moreover, the text and voice messages came from an account labeled “76127” and not from a phone number associated with DEU or Questar Gas.³⁴ For DEU to notify a customer of an interruption, that notice should clearly and unambiguously come from DEU and not from an unknown contact point.

Similarly, the email message sent to Mr. Tucker and Mr. Swenson cannot constitute notice of the January 6-7, 2017 interruption. As an initial matter, email is not an appropriate method of providing notice of interruptions to US Magnesium because US Magnesium did not identify email as an Interruption Contact that “enables the Company to immediately notify a customer of a required interruption.” As such, email to US Magnesium cannot constitute notice of the interruption sufficient to trigger DEU’s ability to impose penalties pursuant to DEU Tariff § 3.02. Moreover, the emails at issue did not come from Questar/DEU but, rather, from an email account labeled “no-reply@ecnaalert.com”.³⁵ That is, like the text messages from “76127” discussed above, the emails were not clearly from Questar/DPU and do not constitute proper notice of an interruption as required by DPU Tariff § 3.02.

Finally, Mr. Rickenbach’s phone call with Roger Swenson on January 6, 2017 does not constitute notice of the interruption. Mr. Rickenbach called Mr. Swenson to ask if the automated

³⁴ R. Swenson Direct Test. at lines 329-341.

³⁵ M. Tucker Direct Test. at lines 69-80; R. Swenson Direct Test. at lines 317-321; US Magnesium Direct Test. Exhibits 6 & 11.

notification system was working.³⁶ That Mr. Rickenbach would call Mr. Swenson to ask this question demonstrates DEU's concern that the automated notification system did not work. Moreover, it is curious that Mr. Rickenbach would call Mr. Swenson's Mobile Phone, but not the land line with extensions specifically identified as Day Phone Interruption Contacts on US Magnesium's Customer Information Sheet. DEU claims that its automated notification systems had for years lacked the ability to call through to phone numbers with extensions. Mr. Rickenbach does not explain why—knowing this—he would choose to call Mr. Swenson's Mobile Phone rather than to call the number US Magnesium had indicated as the Day Phone Interruption Contact number for daytime interruption notices. Mr. Swenson has testified that he was traveling and had received certain messages, but had no reason to believe that the DEU automated notification system had not called the Day Phone Interruption Contact number on US Magnesium's Customer Information Sheet.³⁷

DEU failed to provide US Magnesium with notice of the January 6-7, 2017 interruption and, as such, is not permitted to impose penalties against US Magnesium for its failure to interrupt.

CONCLUSION

For the foregoing reasons, US Magnesium respectfully requests that the Commission enter an order denying DEU's Motion for Summary Judgment and ruling that DEU may not impose penalties against US Magnesium pursuant to DEU § 3.02 related to US Magnesium's use of gas during the January 6-7, 2017 interruption.

³⁶ R. Swenson Rebuttal Test. at lines 251-257.

³⁷ See R. Swenson Direct Test. at lines 227-239; R. Swenson Rebuttal Test. at lines 251-257.

DATED this 14th day of February 2018.

HATCH, JAMES & DODGE

/s/ 
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 14th day of February 2018 on the following:

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